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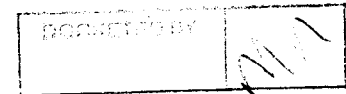
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IN THE MATTER OF THE REVIEW AND
 POSSIBLE REVISION OF ARIZONA UNIVERSAL
 SERVICE FUND RULES, ARTICLE 12 OF THE
 ARIZONA ADMINISTRATIVE CODE.

Docket No. RT-00000H-97-0137

IN THE MATTER OF THE INVESTIGATION OF
 THE COST OF TELECOMMUNICATIONS
 ACCESS.

Docket No. T-00000D-00-0672

IN THE MATTER OF QWEST CORPORATION'S
 FILING OF RENEWED PRICE REGULATION
 PLAN

Docket No. T-01051B-03-0454

**REPLY COMMENTS OF AT&T
 IN RESPONSE TO FEBRUARY 3,
 2009 PROCEDURAL ORDER**

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Pursuant to the Procedural Order entered in these dockets¹ dated February 3, 2009,
 AT&T Communications of the Mountain States, Inc. and TCG Phoenix (collectively, "AT&T")
 reply to the comments of Qwest and RUCO concerning whether Qwest's intrastate switched
 access rates should be included in this proceeding.²

Qwest and RUCO ask the Commission to abstain from reviewing Qwest's access rates
 because the Commission bifurcated this proceeding more than five years ago and Qwest's access
 rates were lowered by \$12 million three years ago. Obviously, neither is a valid reason to allow
 Qwest to continue to maintain excessively high switched access rates now.

¹ Commission records indicate that per "Decision No. 67047, dated 6/18/04, Dockets T-01051B-03-0454 and T-000000-00-0672 are consolidated." See also, Procedural Order in Docket Nos. T-00000D-00-0672 and T-01051B-03-0454, dated Nov. 17, 2003, p. 4.

² AT&T will use the term "access rates" to refer to intrastate switched access rates and the term "interstate access rates" to refer to interstate switched access rates.

1 While Qwest may have somewhat reduced access rates three years ago, there clearly was
2 no expectation that Qwest's rates would not be reduced further. To the contrary, there was every
3 reason to believe that Qwest's switched access rates would be subject to additional reduction
4 when the term of its price cap plan expires. For example, the Commission noted in the price cap
5 plan decision that one party to the settlement had described Qwest's access rates reduction as "a
6 reasonable, but cautious step."³ The time for another step is now. The Commission should
7 examine Qwest's switched access rates, along with the switched access rates of all local
8 exchange carriers operating in Arizona.

9 Moreover, Commission examination of Qwest's access rates certainly is not unfair to
10 Qwest. Qwest had the benefit of the switched access settlement for the full three-year term of
11 the settlement at a rate level millions of dollars higher than interstate access rates. With the
12 benefit of that bargain fulfilled, the Commission should address the fact that Qwest's access rates
13 are still too high and constitute a significant amount of the total access charges imposed on
14 interexchange carriers in Arizona.

15 High access rates cause consumers to pay artificially high long distance rates, threaten
16 universal service in Arizona and discourage deployment of broadband facilities in Arizona.⁴
17 There's no reason for further delay in finding a comprehensive solution to those serious
18 problems.

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³ Decision No. 68604, p. 22, ll. 18-19.

21 ⁴ AT&T explained in its February 19, 2009 Comments (pp. 2-4) how high access rates cause these problems and will
22 not repeat that explanation here. In that explanation, AT&T cited to the Arizona Department of Commerce's
23 "Arizona Broadband Initiative and Framework: Analysis and Report," and the Phoenix Center's Policy Bulletin
24 No. 22 entitled "Do High Call Termination Rates Deter Broadband Deployment?" but inadvertently left out
hyperlinks to those studies. The hyperlinks to those studies are
<http://www.azcommerce.com/doclib/prop/originals/arizona%20broadband%20initiative%20framework.pdf> and
<http://www.phoenix-center.org/PolicyBulletin/PCPB22Final.pdf>, respectively.

1 **I. EXAMINATION OF QWEST'S INTRASTATE SWITCHED ACCESS RATES IS**
2 **NECESSARY AND FAIR**

3 Qwest argues that it would be "simply unfair" for the Commission to examine Qwest's
4 access rates now, because Qwest has previously reduced its access rates, while other carriers did
5 not.⁵ Qwest's argument obfuscates the real issues: Are Qwest's current switched access rates
6 too high (i.e., harmful to the public interest) and, if so, by what amount and how should they be
7 reduced? If Qwest's rates are too high now, they are harming competition, universal service and
8 broadband deployment in Arizona. It is irrelevant that Qwest reduced its switched access rates
9 somewhat three years ago. The fact remains that Qwest's rates are still too high.⁶

10 Qwest's argument not only misses the point, it wrongly characterizes a Commission
11 examination as "simply unfair." Three years ago, Qwest entered into a settlement of its
12 Renewed Price Cap Plan ("Plan"), which was approved by the Commission. Among other
13 things, it lowered Qwest's switched access rates by \$12 million.⁷ The Plan has an express term
14 of three years, which expires in less than three weeks (March 22) and renewal or revision of the
15 Plan is subject to approval by the Commission.⁸ Qwest has no ground to argue that it would be
16 unfair to examine its switched access rates now, as its Plan expires. Qwest has received the full
17 benefit of the bargain it struck when it entered into the settlement. As importantly, it has
18 benefited throughout that term from access charges that are much higher than its interstate access
19 charges. That is more than fair. To immunize Qwest from scrutiny now that the Plan's term is
20

21 ⁵ Qwest Comments Regarding Scope of Phase 2 ("Qwest Comments"), p. 8 (Feb. 19, 2009).

22 ⁶ Qwest mischaracterizes AT&T's concern about Qwest's access rates. Qwest suggests that AT&T fears that
Qwest's access rates may revert to "Pre-Price Cap Plan Levels." Qwest Comments, p. 7. That is not the AT&T
concern at all. AT&T's well-founded concern is that Qwest's current access rate levels are excessive.

23 ⁷ Consolidated Docket Nos. T-01051B-03-0454 and T-00000D-00-0672, Decision No. 68604, Opinion and Order,
Exh. A (Settlement Agreement), p. 5 (Mar. 23, 2006) ("Decision 68604").

24 ⁸ *Id.* at Settlement Agreement, p. 13.

1 ending would allow Qwest to maintain access rates that are too high to the detriment of Arizona
2 consumers.⁹ That result is what would be unfair.

3 Qwest clearly could not have expected that its access rates would remain unexamined
4 when the Plan expired. When it adopted the settlement of Qwest's Plan, the Commission
5 explained that MCI supported the settlement agreement's \$12 million reduction of Qwest's
6 access revenues, but considered it only a "reasonable, but cautious step."¹⁰ MCI believed it was
7 a cautious *step* because MCI had proposed that Qwest's rates be reduced to *interstate* levels,
8 which at that time would have reduced Qwest's access rates by \$30 million.¹¹ The \$12 million
9 reduction agreed to represented only a 40% step to the most appropriate reduction level.

10 Further, Qwest itself has acknowledged the feasibility of reducing its switched access
11 charges and those of other carriers to interstate levels. The procedural order that consolidated the
12 proceeding addressing Qwest's price cap plan and the switched access proceeding stated that
13 Qwest had asserted "that the Commission could reduce access charges to interstate levels in
14 conjunction with implementation of an end-user charge to offset the revenue loss from the access
15 charge reduction."¹² Only last year in these dockets, Qwest again suggested that it "may be able
16 to reduce switched access rates to FCC levels, and do so by increasing other service rates or
17 establishing one flat rate charge."¹³ In the same pleading, Qwest specifically stated "parity with
18 FCC rates should be examined in this process."¹⁴

19
20 ⁹ Qwest claims that AT&T "should not be heard to complain that the Phase 1 access reductions were not adequate"
21 because AT&T "quit the case" in 2004. Qwest, p. 8. Qwest's claim is ridiculous. The fact that AT&T did not
22 oppose a three-year settlement of Qwest's access charges can in no way be reasonably construed as a bar against
23 AT&T (or any party) claiming that Qwest's access rates should be re-examined and reduced after that three-year
24 period has expired.

¹⁰ Decision 68604, p. 22.

¹¹ *Id.*

¹² Consolidated Docket Nos. T-00000D-00-0672 and T-01051B-03-0454, Procedural Order, p. 2 (Nov. 17, 2003).

¹³ Qwest Initial Comments in this proceeding, Exhibit B, p. 1 (Q&A 2), p. 2 (Q&A 4), (Jan. 7, 2008).

¹⁴ *Id.* at Exh. B, p. 6 (Jan. 7, 2008).

1 If Qwest is now suggesting that the Commission should require only CLECs and
2 independent LECs to lower access rates to interstate levels, its position is untenable. Qwest has
3 complained correctly that an imbalance of access charge levels among carriers can skew
4 competition.¹⁵ Yet, that would be exactly the result if other carriers were required to lower their
5 access rates to interstate levels and Qwest was not.

6 In sum, Qwest's access charges are too high. They need to be examined and reduced.
7 This is true despite previous access charge reductions by Qwest. Qwest has enjoyed the benefit
8 of that settlement at access rates well above where they should be for the full three-year term of
9 that settlement. The fact that Qwest's access rates may be lower than the access rates charged by
10 other carriers does not change any of these facts. It just means that the Commission also needs
11 to reduce those carriers' access charges.

12
13 **II. THE FACTS DEMONSTRATE A COMPELLING NEED TO EXAMINE**
14 **QWEST'S RATES**

15 Qwest and RUCO contend that no evidence has been produced showing that Qwest's
16 rates are inappropriate or need to be examined.¹⁶ They are wrong. The facts demonstrate that
17 Qwest's access charges are too high and contribute significantly to the excessive access revenues
18 collected in the state.

19 In its February 18, 2009 comments, AT&T provided estimates of Qwest's intrastate and
20 interstate access rates. Qwest's estimated average *interstate* switched access unit rate in Arizona
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23 ¹⁵ See Qwest Comments, p. 9.

24 ¹⁶ See, e.g., RUCO Comments on Inclusion of Qwest in Phase II, p. 3 (Feb. 19, 2009) ("RUCO Comments"); Qwest
Comments, pp. 2, 4.

1 is \$0.0033, while its estimated average *intrastate* switched access unit rate is \$0.0187.¹⁷ In other
2 words, Qwest's intrastate rate is more than five times its interstate rate. But, the origination and
3 termination functions and pathways used by Qwest to provide switched access service are
4 materially identical for interstate and intrastate calls. The revenues generated by this large
5 difference in rates over identical costs are a hidden and very large subsidy for Qwest.

6 This Qwest subsidy is a substantial part of the overall subsidy generated by the access
7 revenues of all Arizona LECs. AT&T estimates that excessive access revenue collected by
8 incumbent LECs is approximately \$45 million annually, and Qwest's portion of that \$45 million
9 is substantial.¹⁸ The Commission, therefore, cannot solve the problems created by high access
10 charges unless it decreases Qwest's access rates along with the access rates of all other local
11 exchange carriers operating in our state.¹⁹

12 **III. EXAMINING QWEST'S ACCESS RATES TOGETHER WITH THE ACCESS**
13 **RATES OF OTHER LOCAL EXCHANGE CARRIERS IS ADMINISTRATIVELY**
14 **EFFICIENT**

15 Qwest claims that including an examination of its access rates in this phase of the
16 proceeding will "diffuse the focus" of the proceeding.²⁰ RUCO speculates that the inclusion of
17

18 ¹⁷ AT&T calculated an "average unit rate" to allow easier comparison of interstate and intrastate rates. These rates
19 were calculated as follows: Average switched access unit rates are calculated from publicly available switched
20 access tariffs. To facilitate an "apples to apples" comparison, this analysis assumes 50% originating usage/50%
terminating usage, 20% tandem usage, tandem facilities mileage at 10 miles, and "direct access" rates where
applicable. Switched access includes the following, as applicable: common carrier line, local switching,
information surcharge, interconnection charge, common port, common transport, tandem transport, tandem
switching. It excludes non-usage dedicated transport rate elements.

21 ¹⁸ Although these estimates are based on publicly available data, AT&T does not provide a specific amount of
22 subsidy for Qwest to avoid even the appearance of disclosing proprietary information. These estimates do not
include intrastate switched access revenues collected by CLECs operating in Arizona, because less information
about CLEC access rates and volumes is publicly available.

23 ¹⁹ Qwest's claim (pp. 6-7 of its comments) that its access revenues have declined does nothing to change this
conclusion. Even if Qwest's access revenues are less than they were in 2003, that does not change the fact that the
hidden subsidies within those revenues are still substantial, both in size and in relation to other carriers.

24 ²⁰ Qwest Comments, p. 6.

1 Qwest may delay final resolution of this matter.²¹ Neither of these parties—who in 2003 argued
2 in, sharp counterpoint to their current position, that considering Qwest’s access charges together
3 with those of other carriers would be administratively efficient—is correct.

4 Qwest and RUCO offer little rationale as to why it would be inefficient now to consider
5 Qwest’s access rates together with others’ access rates. Instead, they point to the fact that AT&T
6 and some other parties advocated bifurcation of the proceeding in 2003. While it is true that
7 AT&T argued then to bifurcate and consider Qwest’s access charges separately, AT&T did so
8 because Qwest, whose access charges formed the bulk of the access charges imposed in the state,
9 had already requested a review of its price cap plan. In that review, all of Qwest’s rates would
10 be analyzed.²² This was not true for other carriers.²³

11 Importantly, AT&T also suggested bifurcation on the stated understanding that all
12 parties’ access charges would be addressed in the same general time frame. Thus, AT&T
13 proposed a schedule for the bifurcated proceeding that would result in decisions for Qwest and
14 the independent companies no more than six months apart.²⁴ If Commission decisions had been
15 rendered this close together, it would have minimized the risk of inconsistency between the
16 decisions.

17 Clearly, the current procedural situation is much different from the one that existed in
18 2003. Although Qwest’s Plan is expiring in less than three weeks, Qwest has not requested
19 review of its Plan. To the contrary, Qwest has asked the Commission to simply extend the
20 expiring Plan—a request that AT&T promptly opposed last year.

21 RUCO Comments, p. 3.

22 Consolidated Docket Nos. T-00000D-00-0672 and T-01051B-03-0454, Procedural Order, p. 3 (Nov. 17, 2003).

23 *Id.* at 3-4.

24 AT&T Brief on Procedural Issues in Docket No. T-00000D-00-0672, p. 4 (Nov. 3, 2003).

1 Equally important, the major policy issues concerning access charges are common to all
2 of these carriers: What are the implications for Arizona consumers and the Arizona economy of
3 a local exchange carrier charging excessive access rates; in light of those implications, should
4 any carrier be allowed to charge excessive access rates; if not, how should excessive rates be
5 reduced and how should carriers be allowed to recover lost revenues? The Commission should
6 answer these questions at the same time for all local exchange carriers to ensure that the answers
7 are consistent and competitively neutral. And, as Qwest argued back in 2003, considering all
8 local exchange carriers at the same time will prevent duplication and waste.²⁵

9
10 **IV. NO PREVIOUS COMMISSION DECISION OR RULING PRECLUDES
EXAMINATION OF QWEST'S SWITCHED ACCESS RATES NOW**

11 Both Qwest and RUCO point to the Commission's 2003 decision to bifurcate the
12 examination of access charges between Qwest and other local exchange carriers as precedent for
13 not examining Qwest's access rates now. According to RUCO, "AT&T's filing [seeking
14 Commission examination of Qwest's access rates] resurrects an issue that was already decided
15 by Judge Nodes."²⁶ Qwest and RUCO overstate the precedential effect of the earlier decision to
16 bifurcate. Neither the ALJ's ruling nor any other ruling or decision precludes an examination of
17 Qwest's access rates now.

18 AT&T does not dispute that over five years ago, ALJ Nodes bifurcated the Access
19 Charge Docket so that Phase 1 of the Access Charge Docket would consider Qwest's access
20 charges in conjunction with the review of Qwest's then-current rate cap plan and Phase 2 would

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23 ²⁵ Qwest Memorandum Regarding Constitutional Requirements for Changing Access Rates and Comments on
Procedural Schedule in Docket No. T-00000D-00-0672, p. 7 (Nov. 3, 2003).

24 ²⁶ RUCO Comments, p. 3.

1 look at the access charges of all other carriers.²⁷ But, the ALJ's ruling also contemplated that the
2 two phases would run on parallel paths: "A subsequent Procedural Order will be issued
3 scheduling testimony and hearing dates for both phases of the proceeding."²⁸ With that direction
4 in mind, the ALJ could not have contemplated, much less ruled on, this situation in which the
5 rates of LECs other than Qwest would not be addressed for over five years. The ruling,
6 therefore, obviously cannot preclude an examination of Qwest's access rates now.

7 The real question is not whether a bifurcation of the proceeding in 2003 precludes the
8 Commission from examining Qwest's access rates now. Rather, the correct inquiry is whether
9 high access rates harm Arizona's consumers and economy and, if so, are Qwest's access rates
10 too high. The Commission cannot answer that question in a timely manner unless it includes
11 Qwest's access rates within the scope of this proceeding.

12 **V. CONCLUSION**

13 High access rates, whether those of Qwest or any other carrier, are bad for Arizona
14 consumers. Qwest's access rates are high—five times higher than its interstate rates. Because of
15 its position as the major incumbent LEC in Arizona, Qwest's high access rates are a major
16 contributor to the problems created by high access rates. Qwest's access rates need to come
17 down.

18 It is not unfair to Qwest if the Commission includes Qwest in a comprehensive
19 examination of all carriers' access rates in an effort to confront and remedy these problems.
20 Qwest's Renewed Price Cap Plan is expiring this month. Qwest received the benefit of its access
21 settlement for the full three-year term of that settlement, collected excessive rates for that term
22 and its switched access rates are ripe for further examination. The Commission should order

23 ²⁷ Consolidated Docket Nos. T-00000D-00-0672 and T-01051B-03-0454, Procedural Order, p. 4 (Nov. 17, 2003).

24 ²⁸ *Id.* at 4.

1 Qwest's switched access rates to be included in a comprehensive Commission examination of
2 the access rates of all Arizona local exchange carriers.

3 RESPECTFULLY SUBMITTED this 5th day of March, 2009.

4 GALLAGHER & KENNEDY, P.A.

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6 By 

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